IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 205 OF 1998.

1. M/s.Ramji Lal Ranjinder Pershad,
   a partnership firm, registered
   under the Partnership Act and
   having their office at 4066,
   Naya Bazar, Delhi 110 006.

2. M/s.National Insurance Co.Ltd.,
   a body corporate, subsidiary of
   General Insurance Corporation of
   India having their registered
   office at 3, Middleton Street,
   Calcutta 700 071, and one of their
   Delhi D.O.No.XIX, at Laxmi Tower,
   Nainiwala Bagh, Azadpur Commercial
   Complex, Delhi 110 033, and their
   Mumbai D.O.No.XII at Sheel Chamber
   3rd floor, 10, Cawasji Patel
   Street, Mumbai 400 023. ... Plaintiffs.

Versus.

M/s.Sany Shipping Pte.Ltd.,
a foreign Shipping Company,
incorporated in Singapore and having
their head office at 101, Cecil Street,
24-09 Tang Eng Building, Singapore
069 533, and carry on their business
in Mumbai through their Agents
M/s.Mitsutor Shipping Agency Pvt.Ltd.
C/o.Damani Shipping Pvt.Ltd., 205/206
Varma Chamber, 11, Homi Street,
Mumbai 400 001. ,... Defendant.

Shri V.S.Amin i/by M/s.V.S.Amin & Co.for the Plaintiffs.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 31st July, 2007.

ORAL JUDGMENT.:

1. This suit is listed on the board under the caption of "Undefended suits for exparte decree". The learned Counsel for the Plaintiffs has tendered on

record an affidavit in lieu of evidence of Mrs.Maithili Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The affidavit is marked "X" for identification and is taken on record. The Plaintiffs have also tendered the original documents along with a list. The original documents along with the list are marked "Y" (collectively) for identification and the same are taken on record.

2. The 1st Plaintiff is a registered partnership firm and the 2nd Plaintiff is an Insurance company. The Defendant is a shipping company incorporated in Singapore and having management, control, possession and coverage of m.v. "Ritz" and carry on business of carriers of goods by sea for consideration. According to the Plaintiffs, the Defendant is carrying on its business in Mumbai through its agents M/s.Mitsutor Shipping Agency Pvt.Ltd. having its office at Mumbai.

3. A shipper M/s.Sineximco Pte.Ltd. having its office at Singapore sold in favour of the 1st Plaintiff 4,000 bags of Toor Whole crop for a total sum of US $60,964.62. The said shipper sent its invoice dated 28th January 1997 which was presented to the 1st Plaintiff through the State Bank of Mysore, Delhi. The 1st Plaintiff paid the amount under the said invoice and the bill of lading and thus obtained title to the

consignment.

4. According to the Plaintiffs, the said 4000 bags were entrusted to the Defendant as owners and/or charterers of steamship vessel m.v."Ritz" for its carriage and safe delivery from the Port of Yangon to Mumbai. The Defendant issued bill of lading dated 28th January 1997 evidencing that 4000 bags of Tool Whole were shipped in sound condition for its safe and timely delivery at Mumbai Port.

5. After the consignment arrived at Mumbai Port, M/s.Govindji Kanji & Co., Mumbai, the clearing agents of the 1st Plaintiff found that 653 bags were landed in torn/slack condition and were mixed with dirt and other foreign matter. The Bombay Port Trust authorities issued remark list certificate dated 5th April 1997 to the Clearing Agents of the 1st Plaintiff stating that out of 4000 bags 653 bags landed in torn and slack condition. Thereafter on the request of the 1st Plaintiff’s Clearing Agents a joint survey of the torn and slack condition of the bags was carried out by M/s.Geo-Chem Laboratories (P) Ltd. Mumbai on behalf of the Defendants. The survey report dated 31st March 1997 found shortage/damage in 920 bags. The 1st Plaintiff by its letter dated 15th April 1997 addressed to the Defendant’s agents in Mumbai lodged a claim for the sum

of Rs.1,97,440.24 for the loss suffered by the Plaintiffs. Though the claim was duly received by the Agents of the Defendant, there was no response from the Defendants.

6. The 1st Plaintiff had insured the aforesaid consignment of 4000 bags with the 2nd Plaintiff for transit risk from the Port of loading to Mumbai vide Insurance Policy dated 6th February 1997. After the 1st Plaintiff lodged the claim for Rs.1,29,023/- with the 2nd Plaintiff, the said amount was paid by the 2nd Plaintiff to the 1st Plaintiff. Thereafter on 2nd July 1997, the 1st Plaintiff executed in favour of the 2nd Plaintiff a letter of subrogation as well as special power of attorney authorising the 2nd Plaintiff to recover the amount of loss suffered by the 1st Plaintiff. Accordingly the present suit has been filed for recovery of the sum of Rs.1,29,023/- with further interest at the rate of 18% per annum.

7. The Plaintiffs have placed on record the following original documents; viz. (i) Invoice dated 28th January 1997; (ii) bill of lading dated 28th January 1997 issued by the Defendant; (iii) Remark list certificate dated 5th April 1997; (iv) Survey report dated 31st March 1997 of M/s.Geo-Chem Laboratories (P) Ltd., Mumbai; (v) Letter of subrogation dated 20th June

1997 executed by the 1st Plaintiff in favour of the 2nd Plaintiff; and (vi) Special power of attorney of the same date executed by the 1st Plaintiff in favour of the 2nd Plaintiff. The said documents have been duly proved by the affidavit in lieu of evidence of Mrs.Maithili Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The claim in the suit is also proved by the said affidavit.

8. In the circumstances, a case is made out for passing a decree in favour of the Plaintiffs. Considering the facts and circumstances and in the absence of any stipulation regarding payment of interest, the further interest will have to be fixed at 9% per annum.

10. Hence there will be a decree in terms of prayer clauses (a) and (b) with modification that the interest at the rate of 9% per annum will be payable from the date of filing of the suit till realisation or payment.

11, The Plaintiffs will be entitled to refund of Court fees, if any, in accordance with the rules.

12. Certified copy is expedited.

Judge.